

Products Liability Law Daily Wrap Up, TOP STORY—CAUSATION—4th Cir.: South Carolina high court asked whether ‘uncontrollable impulse’ exception to suicide rule applies in wrongful death suit, (Jun. 15, 2018)

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By Susan Engstrom

In a wrongful death action brought against Ford Motor Company by the widow of a driver who committed suicide after sustaining severe injuries in a one-car accident during which the vehicle's airbag allegedly failed, the U.S. Court of Appeals for the Fourth Circuit found that resolution of the case turned on questions of South Carolina law for which there was no controlling precedent. Accordingly, in an unpublished decision, the appellate panel certified two questions to the state's highest court, asking whether the state recognizes the "uncontrollable impulse" exception to the general rule that suicide breaks the causal chain in a wrongful death case, and whether comparative negligence in causing enhanced injuries applies in a crashworthiness case in which the plaintiff alleges claims of strict liability and breach of warranty and is seeking damages related only to the plaintiff's enhanced injuries ([Wickersham v. Ford Motor Co.](#), June 14, 2018, Floyd, H.).

The driver, who had a history of mental illness, was injured in a single-car accident when his 2010 Ford Escape hit a tree after he drove through a T-intersection. He sustained significant injuries, including the eventual loss of one eye, and he suffered severe pain as a result of the accident. Seventeen months later, he committed suicide. His wife alleged that her husband's injuries and suicide were caused by the Escape's defective airbag restraint system, which deployed the airbag too late. She filed suit against Ford in South Carolina federal district court, asserting claims both individually and as her husband's representative for negligence, strict liability, and breach of warranty.

Jury verdict. The matter was tried before a jury, which returned a verdict in the wife's favor after finding that the airbag system in her husband's 2010 Ford Escape was defectively designed and that this defect was the cause of his injuries and eventual suicide [see *Products Liability Law Daily*'s August 30, 2016 [analysis](#)]. The total award was \$4.65 million. However, the jury also found that the driver was at fault in his use of the Escape's restraint system and that this fault was a proximate cause of his injuries. The jury attributed 30 percent of the fault to the driver, and 70 percent to Ford. The automaker subsequently moved for judgment as a matter of law, for a new trial, and to alter or amend the judgment.

District court ruling. The district court denied Ford's motions, finding that sufficient evidence supported the jury verdict [see *Products Liability Law Daily*'s August 31, 2017 [analysis](#)]. According to the court, the wife presented proof that there was a design defect in the SUV's restraint system and that a reasonable juror could find Ford liable for the wrongful death of her husband. The district court held that a defendant may be held liable for a decedent's wrongful death by suicide when the decedent suffered an uncontrollable impulse that was proximately caused by the defendant's wrongful conduct. The court also held that South Carolina's supreme court would decide that comparative fault is not a defense to strict liability and breach of warranty claims in a crashworthiness case such as this one, even when the user was negligent in his use of the defective component.

Uncontrollable impulse exception. On appeal, Ford argued that South Carolina courts do not recognize the uncontrollable impulse exception to the general rule that suicide breaks the causal chain in wrongful death claims. Alternatively, the company asserted that the state does not recognize the exception as applied by the district court. According to the appellate panel, this issue was determinative because the district court recognized and instructed the jury on the exception, and the jury found Ford liable under the wrongful death claim based on the exception. Thus, if South Carolina does not recognize the exception, or does not recognize

the exception as applied by the district court, the Fourth Circuit would vacate and remand the wrongful death claim for reconsideration under the proper standard. Otherwise, the panel would affirm.

Because the panel found no South Carolina case directly applying the uncontrollable impulse exception, and because there was no controlling precedent to indicate whether the state recognized it, the panel certified the following question to the state high court:

Does South Carolina recognize an "uncontrollable impulse" exception to the general rule that suicide breaks the causal chain for wrongful death claims? If so, what is the plaintiff required to prove is foreseeable to satisfy causation under this exception—any injury, the uncontrollable impulse, or the suicide?

Comparative negligence. Ford also appealed the district court's denial of its motion to alter or amend the judgment, contending that the jury's total award of \$4.65 million should be reduced by 30 percent to reflect the jury's finding with respect to the driver's comparative fault. According to the automaker, South Carolina law permits comparative negligence as a defense in strict liability and breach of warranty claims under the facts of this case. The appellate panel found this issue to be determinative as well because if comparative negligence is a defense to strict liability and breach of warranty claims in crashworthiness cases, then the district court erred in denying Ford's motion to alter or amend the jury award. If it is not a defense, then the district court did not err, as the parties apparently agreed that the entire jury award was recoverable under the strict liability or breach of warranty claims.

Finding that these facts raised a novel question of South Carolina law, the panel was unable to predict with confidence how the state high court would rule on this issue. Consequently, the panel certified to the court a second question:

Does comparative negligence in causing enhanced injuries apply in a crashworthiness case when the plaintiff alleges claims of strict liability and breach of warranty and is seeking damages related only to the plaintiff's enhanced injuries?

The case is No. [17-2131](#).

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Companies: Ford Motor Co.

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